

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Team # 6	CCRB Case #: 201208548	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/03/2012 10:45 PM	Location of Incident: § 87(2)(b)	Precinct: 45	18 Mo. SOL 1/3/2014	EO SOL 1/3/2014	
Date/Time CV Reported Tue, 07/03/2012 10:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/05/2012 7:45 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Rogers	02421	933283	045 DET
2. DT3 Jacob Garcia	03521	928348	045 DET
3. SGT Adam Mellusi	00000	931825	045 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Paul Trapani	00000	918420	045 PCT
2. POM Robert Candrea	07049	939752	045 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Rogers	Abuse: PO Robert Rogers stopped § 87(2)(b)	
B.POM Robert Rogers	Force: PO Robert Rogers used physical force against § 87(2)(b)	
C.DT3 Jacob Garcia	Force: Det. Jacob Garcia used physical force against § 87(2)(b)	
D.SGT Adam Mellusi	Discourtesy: Sgt. Adam Mellusi spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On July 3, 2012, § 87(2)(b) and § 87(2)(b) filed complaints with IAB via telephone on behalf of § 87(2)(b) and § 87(2)(b). The complaint was referred to the CCRB via IAB log #12-35785. On July 5, 2012, § 87(2)(b) filed a complaint with the CCRB via the Call Processing System on behalf of § 87(2)(b).

At approximately 10:45 p.m. on July 3, 2012, PO Robert Rogers and Det. Jacob Garcia traveled to § 87(2)(b) in Co-op City, in the Bronx, to question § 87(2)(b) who was suspected of intentionally damaging a police vehicle on June 1, 2012. The following allegations resulted:

- **Allegation A: Abuse of Authority: PO Robert Rogers stopped** § 87(2)(b) § 87(2)(g)
- **Allegation B: Force: PO Robert Rogers used physical force against** § 87(2)(b) § 87(2)(g)
- **Allegation C: Force: Det. Jacob Garcia use physical force against** § 87(2)(b) § 87(2)(g)
- **Allegation D: Discourtesy – Sgt. Adam Mellusi spoke discourteously to** § 87(2)(b) § 87(2)(g)
- § 87(4-b), § 87(2)(g)

The case was initially assigned to Investigator Peter Hoy on July 5, 2012. On October 17, 2012, the case was reassigned to Investigator Jonathan Phillips, after Investigator Hoy's promotion. On October 2, 2013, the case was reassigned to Investigator Owen Godshall, the undersigned, after Investigator Phillips left the agency.

## Results of Investigation

### Civilian Statements

**Complainant:** § 87(2)(b)

- § 87(2)(b) a black female, is the mother of § 87(2)(b). She did not witness the incident, so her testimony could not be used to determine the disposition of the allegations.

**Victim:** § 87(2)(b)

- § 87(2)(b) § 87(2)(b) old at the time of the incident, is a 5'10", 160-pound black male with black hair and brown eyes. He was employed as a porter by Hyundai.

### **Arrest Photograph**

In his arrest photograph, § 87(2)(b) s left eye is significantly swollen. There is no discernable injury to his right eye (Encl. 6D).

### **CCRB Testimony**

§ 87(2)(b) was interviewed at the CCRB on August 14, 2012 (Encl. 6A-C). At approximately 10:45 p.m. on July 3, 2012, § 87(2)(b) attended a fireworks display outside of § 87(2)(b) in Co-op City, located in the Bronx. He estimated that there were thousands of other people watching the display. He specifically recalled seeing his girlfriend, § 87(2)(b) his friend, § 87(2)(b) an unidentified female, and two males, identified by the investigation as § 87(2)(b) and § 87(2)(b).

As § 87(2)(b) observed the display, he noticed two plainclothes officers exiting an unmarked car. § 87(2)(b) identified one as PO Robert Rogers, while the investigation would later identify the other as Det. Jacob Garcia. Both were assigned to the 45<sup>th</sup> Precinct's Detective Squad. § 87(2)(b) described PO Rogers as a 6' white male in his mid-40s and Det. Garcia as heavyset, 5'9" white male in his thirties. § 87(2)(b) recognized PO Rogers from several encounters in the past, including an incident several years earlier when PO Rogers allegedly broke his clavicle during an arrest for § 87(2)(b).

More recently, § 87(2)(b) had gotten into a verbal dispute with PO Rogers on June 1, 2012. PO Rogers subsequently accused § 87(2)(b) of damaging a police vehicle during the dispute, an allegation § 87(2)(b) denied. Between June 1, 2012 and July 3, 2012, several of § 87(2)(b) s friends informed him that PO Rogers had approached them and told them that he would break § 87(2)(b) s arm if he ever saw him.

Not wanting to get into a confrontation with PO Rogers, § 87(2)(b) turned and began walking, not running, towards § 87(2)(b). PO Rogers, however, came up behind § 87(2)(b) and wrapped his arm around his neck. He then slammed § 87(2)(b) down towards the ground, face-first. § 87(2)(b) managed to raise both of his hands in front of him to brace himself as he hit the ground. PO Rogers then stood over § 87(2)(b) and punched him 15 to 20 times on the left side of his face. Det. Garcia then approached § 87(2)(b) and, standing over him, kicked him on the right side of his face. § 87(2)(b) could not estimate how many times Det. Garcia kicked him. § 87(2)(b) reacted to the blows by curling up in the fetal position and attempting to cover his face with his hands. The beating lasted for approximately 25 seconds, after which § 87(2)(b) was placed in handcuffs and placed in the rear of PO Rogers' vehicle.

Once handcuffed, § 87(2)(b) observed approximately 20 additional officers arrive at the location. He recognized some as being NYPD officers, and some as being from the Co-op City Department of Public Safety. After these officers arrived, § 87(2)(b) was moved from PO Rogers' vehicle into a marked vehicle, and driven to the 45<sup>th</sup> Precinct stationhouse. Ten minutes after arriving, however, § 87(2)(b) was loaded into an ambulance and driven to § 87(2)(b). There, he was diagnosed with a broken left orbital, a broken nose, and a chipped tooth.

Approximately 12 hours later, he was discharged from the hospital, and returned to the stationhouse, where he was interviewed by IAB.

§ 87(2)(b) was aware that other people at the location, including a male identified by the investigation as § 87(2)(b) were arrested after him. He did not, however, provide accounts of any of these arrests.

**Complainant/Witness:** § 87(2)(b)

- § 87(2)(b) is a male.

**CCRB Testimony**

On March 6, 2013, § 87(2)(b) provided a telephone statement (Encl. 9A). At approximately 10:45 p.m. on July 3, 2012, in front of § 87(2)(b) in Co-op City, in the Bronx, two police officers, identified by the investigation as PO Robert Rogers and Det. Jacob Garcia of the 45<sup>th</sup> Precinct Detective Squad, threw § 87(2)(b) friend, § 87(2)(b) to the ground. § 87(2)(b) covered his face with his hands once he was on the ground. He did not strike the officers, or make any sort of physical contact with them. Neither officer punched § 87(2)(b) once he was on the ground, but one of them, identified by the investigation as PO Rogers, struck § 87(2)(b) in the face with a radio, before placing him in handcuffs.

Several bystanders were present at the time, including § 87(2)(b). After § 87(2)(b)'s arrest, the officers took two of these individuals' phones and broke them. § 87(2)(b) did not identify these individuals, or specify whether they had been recording the incident with their phones.

At some point during the incident, a § 87(2)(b)-old male, identified by the investigation as § 87(2)(b) was arrested as well. The officers who arrested § 87(2)(b) punched him. § 87(2)(b) did not describe this force in any detail, and did not state whether these were the same officers who had arrested § 87(2)(b).

**Attempts to Schedule § 87(2)(b) for a Sworn Statement**

A first please-call letter was mailed to § 87(2)(b) on March 4, 2013. A call was made to § 87(2)(b) on March 6, 2013. A telephone statement was taken, and an interview was scheduled for March 11, 2013. § 87(2)(b) failed to appear for this interview, and did not call ahead to cancel or reschedule. A missed appointment letter was mailed to § 87(2)(b) on March 12, 2013. Neither of the letters sent to him were returned to the CCRB by the US Postal Service. Between March 13, 2013 and June 4, 2013, three calls were made to § 87(2)(b) to reschedule his interview. On the final call, he scheduled an interview for June 12, 2013. Once again, however, he failed to appear for this interview without calling ahead to cancel or reschedule. A December 5, 2013 search of the Department of Correction's online inmate database confirmed that § 87(2)(b) is not currently incarcerated (Encl. 10A).

**Complainant/Witness:** § 87(2)(b)

- § 87(2)(b) is a black female.

**CCRB Testimony**

On October 7, 2013, § 87(2)(b) provided a telephone statement (Encl. 7A). At approximately 10:45 p.m. on July 3, 2012, § 87(2)(b) was walking with a group of friends, including § 87(2)(b) and her boyfriend, § 87(2)(b). An unmarked car drove up to the group, and two officers, identified by the investigation as PO Robert Rogers and Det. Jacob Garcia, exited. § 87(2)(b) had been involved in a dispute of some kind with PO Rogers on an earlier date. Upon seeing PO Rogers, § 87(2)(b) began backing away from him. Once he exited the vehicle, PO Rogers ran straight towards § 87(2)(b). Initially, she stated that he did not say anything to § 87(2)(b) as he approached. Later, however, she stated that he may have told him not to run.

When PO Rogers reached § 87(2)(b) he tackled § 87(2)(b) to the ground. § 87(2)(b) landed on his right side, with PO Rogers landing on top of him. PO Rogers then punched § 87(2)(b) approximately eight times on the left side of his face. As PO Rogers struck § 87(2)(b) Det. Garcia stood beside his partner, warning § 87(2)(b) and her friends to stay back. At this time, a crowd of about 20 bystanders gathered around § 87(2)(b). As the crowd approached, PO Rogers took out an object that § 87(2)(b) believed to be a radio. PO Rogers struck § 87(2)(b) twice with the object, first on his face, and then once on his chest. § 87(2)(b) did not resist PO Rogers at any point, or make any movements as he was hit.

PO Rogers then placed § 87(2)(b) in handcuffs and pulled him to his feet. § 87(2)(b)'s face was covered in blood as he rose. By this time, a large number of officers, from both the NYPD and the Co-op City Department of Public Safety, responded to the location. The officers placed § 87(2)(b) into a nearby police vehicle, and drove him away.

§ 87(2)(b) would later learn that § 87(2)(b) suffered a broken nose and a fractured orbital as a result of PO Rogers' force. He also had to have at least two of his teeth removed.

**Witness:** § 87(2)(b)

- § 87(2)(b) is a female.

**CCRB Testimony**

On October 3, 2013, § 87(2)(b) provided a telephone statement (Encl. 8A). At approximately 10:45 p.m. on July 3, 2012, § 87(2)(b) exited her apartment building, located at § 87(2)(b) in Co-op City, in the Bronx. She noticed a large group of people surrounding two people who appeared to be fighting. When she approached, she saw that the two individuals were her friend, § 87(2)(b) and a plainclothes officer, identified by the investigation as PO Robert Rogers. No other officers were present at that time.

§ 87(2)(b) stated at first that § 87(2)(b) was on the ground when she first saw him. Later, however, she stated that § 87(2)(b) had been standing up at the outset. PO Rogers approached § 87(2)(b) and punched him once in the face, knocking him to the ground. PO Rogers did not say anything as he approached § 87(2)(b). Once § 87(2)(b) fell to the ground, PO Rogers took out his radio and struck § 87(2)(b) several times in the face. § 87(2)(b) estimated that PO Rogers hit § 87(2)(b) more than ten times.

As PO Rogers was hitting § 87(2)(b) a large number of uniformed officers from the Co-op City Department of Public Safety arrived at the location and began pushing the bystanders back. These officers placed one of the bystanders, identified by the investigation as § 87(2)(b) under arrest. § 87(2)(b) did not know why § 87(2)(b) was being arrested, or what actions the officers took

towards him. The Co-op City officers then began spraying the crowd with pepper spray, striking § 87(2)(b). Due to the irritation to her eyes, § 87(2)(b) was unable to observe the remainder of the incident.

§ 87(2)(b) later heard that § 87(2)(b) was ultimately arrested. She did not know why he had been arrested. She also heard that § 87(2)(b) was taken to the hospital while in custody, and diagnosed with a fractured orbital.

**Witness:** § 87(2)(b)

- § 87(2)(b) is a male. He is an officer in the Co-op City Department of Public Safety, shield #§ 87(2)(b).

**Complaint Report** § 87(2)(b) **and Arrest Report** § 87(2)(b)

§ 87(2)(b) prepared complaint and arrest reports regarding § 87(2)(b)'s arrest. § 87(2)(b) arrested § 87(2)(b) at 10:45 p.m. on July 3, 2013, in front of § 87(2)(b). § 87(2)(b) was charged with § 87(2)(b). The narratives state that § 87(2)(b) was arrested after ignoring several orders to disperse. He also interfered when officers tried to arrest his girlfriend. When he himself was arrested, he became combative, and resisted the officers (Encl. 12A-D).

**CCRB Testimony**

§ 87(2)(b) was interviewed at § 87(2)(b), in the Bronx, on July 1, 2013 (Encl. 12E-F). On July 3, 2012, § 87(2)(b) was assigned to a special detail for a fireworks display at Co-op City, in the Bronx. § 87(2)(b) had initially been partnered with § 87(2)(b) also of the Department of Public Safety, but he ended up riding in a marked car with another Department officer, whom he could not identify. § 87(2)(b) was assigned to a marked scooter by himself. § 87(2)(b) was in uniform at the time.

At approximately 10:45 p.m., § 87(2)(b) and his unidentified partner received a request for assistance from NYPD officers at § 87(2)(b) one of the buildings in Co-op City. When § 87(2)(b) and his partner arrived, they found a large, unruly crowd surrounding several NYPD and Co-op City officers. Additional units from both agencies continued responding after § 87(2)(b) arrived. § 87(2)(b) did not know what had happened to prompt the request for assistance, and did not know why the crowd had formed. Once he arrived, § 87(2)(b) exited his vehicle and engaged in crowd control, in an attempt to keep the crowd away from the NYPD officers.

One member of the crowd, whom § 87(2)(b) identified as § 87(2)(b) repeatedly approached the NYPD officers. § 87(2)(b) told § 87(2)(b) several times to step away from the officers, but § 87(2)(b) did not comply. He then reached out to grab § 87(2)(b)'s arms, to place him under arrest for disorderly conduct. § 87(2)(b) resisted by flailing his arms and pushing § 87(2)(b) away from him. § 87(2)(b) responded by pushing § 87(2)(b) to the ground, pulling his arms behind his back, and handcuffing him. Several Co-op City officers aided § 87(2)(b) in pulling § 87(2)(b)'s arms back. No NYPD officers were involved in § 87(2)(b)'s arrest. While § 87(2)(b) did not see § 87(2)(b) holding a phone at any point, § 87(2)(b) complained to him after he was handcuffed that he had dropped his phone. § 87(2)(b) did not strike any phones out of § 87(2)(b)'s hands.

§ 87(2)(b) did not witness any interactions between § 87(2)(b) and any NYPD officers. He did not hear any officers use the word “fuck,” or any other profanities, during the incident. He did not recall seeing any other arrests take place at the location, and had no knowledge of § 87(2)(b)'s arrest. § 87(2)(b) did not recognize a photograph of § 87(2)(b).

**Witness:** § 87(2)(b)

- § 87(2)(b) is a male. He is a detective in the Co-op City Department of Public Safety, shield #§ 87(2)(b).

**CCRB Testimony**

§ 87(2)(b) was interviewed at § 87(2)(b), in the Bronx, on July 1, 2013 (Encl. 11A-B). § 87(2)(b)'s statement was largely consistent with § 87(2)(b) except as follows. When § 87(2)(b) arrived at § 87(2)(b) he saw that the NYPD officers were arresting an individual whom he identified as § 87(2)(b). § 87(2)(b) did not know why § 87(2)(b) was arrested, or how the officers had restrained him. § 87(2)(b) was already in handcuffs by the time § 87(2)(b) arrived. § 87(2)(b) did not see the officers use any kind of force against § 87(2)(b) and he did not see any injuries on § 87(2)(b).

§ 87(2)(b) was the only officer involved in arresting § 87(2)(b). No Co-op City or NYPD officers aided § 87(2)(b) in restraining § 87(2)(b). § 87(2)(b) did not see § 87(2)(b) strike § 87(2)(b)'s phone from his hand.

§ 87(2)(b) did not recall hearing any NYPD officer using the word “fuck,” or any other profanities, during the incident.

**Attempts to Contact Civilians**

- § 87(2)(b)'s address was found in the 45<sup>th</sup> Precinct command log entry recording his arrival at the stationhouse for booking. § 87(2)(b)'s address was found on his arrest report. On March 4, 2013, a Lexis Nexis search revealed no further contact information for § 87(2)(b) or § 87(2)(b). Letters were sent to both individuals on March 4, 2013 and August 22, 2013. None of these letters were returned to the CCRB by the US Postal Service. On August 22, 2013, a copy of § 87(2)(b)'s handwritten juvenile report was obtained from the Co-op City Department of Public Safety. A telephone number was listed on the report. When the number was called on August 22, 2013, it was found to be disconnected. To date, neither individual has responded to these contact attempts. A December 5, 2013 search of the Department of Correction's online inmate database showed that neither § 87(2)(b) nor § 87(2)(b) is incarcerated (Encl. 10D-E).
- § 87(2)(b) provided a telephone number for § 87(2)(b). Sgt. Nicole Ruggiero of IAB Group 54 provided a telephone number for § 87(2)(b). Between October 3, 2013 and October 7, 2013, multiple telephone calls were made to their phone numbers in an attempt to obtain statements regarding the incident. To date, neither individual has responded to these contact attempts. A December 5, 2013 search of the Department of Correction's online inmate database showed that neither § 87(2)(b) nor § 87(2)(b) are currently incarcerated (Encl. 10B-C).

**Other Evidence**

**Video Footage**

§ 87(2)(b) provided a copy of a video taken by § 87(2)(b) on his cell phone. The video takes place in a large parking lot. A large number of civilians and uniformed officers can be seen moving about. Several vehicles are parked in the lot, including marked police vehicles, and unmarked cars with police lights on their dashboards. At 1:20, § 87(2)(b) can be heard stating, “You already tackled the man, you already tackled him on the floor, that didn’t call for punching in the face like that.”

At 1:44, § 87(2)(b) approaches an unmarked grey sedan, where a plainclothes officer, identified by the investigation as Det. Jacob Garcia, is standing by the open door. § 87(2)(b) asks, “Why you gonna punch the boy in the face like that?” At 1:56, a uniformed male officer, identified by the investigation as Sgt. Adam Mellusi, walks past § 87(2)(b). § 87(2)(b) states, “I hope New York got money for that.” Sgt. Mellusi turns away from § 87(2)(b) waving his hand towards him, and states, “Shut the fuck up.” § 87(2)(b) replied, “Yeah, I’m gonna shut the fuck up. That’s why we march against you!”

§ 87(2)(b) continues walking around the parking lot for the next five minutes. As § 87(2)(b) was moving the camera rapidly during this period, the video becomes blurry and hard to follow. § 87(2)(b) approaches a group of uniform officers several times, angrily accusing them of “beating a boy in the face.” At several points during this period, a male voice can be heard ordering § 87(2)(b) to step back. § 87(2)(b) however, disregards these orders. At 4:50, a male voice says, “You wanna go to the precinct? Put your hands behind your back.” Shouting can then be heard, and § 87(2)(b)’s camera falls to the ground. The camera remained recording on the ground for approximately 47 minutes after it was dropped. For the first five minutes after the camera falls, incoherent shouting can be heard in the background. The remainder of the footage is silent (Encl. 17A).

#### **NYPD Statement(s):**

##### **Subject Officer: PO ROBERT ROGERS**

- *PO Rogers, § 87(2)(b) old at the time of the incident, is a 6’4”, 250-pound white male with brown hair and blue eyes.*
- *PO Rogers worked from 4:00 p.m. on July 3, 2012 until 1:00 a.m. on July 4, 2012. He was assigned to investigative duty as part of the 45<sup>th</sup> Precinct Detective Squad. He worked with Det. Jacob Garcia. PO Rogers was in plainclothes, and assigned to an unmarked blue Ford Taurus, RMP #1500.*

#### **Command Discipline Report #2013-260-0077**

PO Rogers did bring a copy of his memo book covering the events of July 3, 2012 to his CCRB interview. He was instructed to fax a copy of the memo book to the CCRB upon returning to his command. On November 11, 2013, PO Rogers provided a copy of Command Discipline Report #2013-260-0077 in lieu of his memo book. The report stated that PO Rogers had lost his memo book for June 5, 2012 and June 6, 2012. While it was not explicitly stated, the proximity between the dates listed on the report and the incident date indicates that PO Rogers’ memo book entries from July 3, 2012 would have been included in the lost memo book. The investigation was thus unable to obtain a copy of PO Rogers’ memo book (Encl. 13A-B).

#### **Complaint Follow-Up Informational Report**



On June 1, 2012, PO Rogers opened a complaint regarding damage inflicted on an unmarked police vehicle. According to the report, at approximately 11:15 p.m. on June 1, 2012, PO Rogers and PO Alejandro Ponce entered § 87(2)(b) in Co-op City, in the Bronx, pursuant to an investigation. At that time, they engaged in a verbal dispute with § 87(2)(b). Later, after leaving the building, the officers found that the unmarked vehicle they had arrived in had been dented on its doors and hood. A canvass of the area was conducted, but no suspects were found.

On June 2, 2012, PO Rogers activated I-card #§ 87(2)(b) regarding the above described incident. In both the “Summary of Investigation” section, and the “Sought As” section, § 87(2)(b) is listed as a suspect. The I-card specifically notes that there is no probable cause to arrest § 87(2)(b). PO Rogers also noted on the I-card that § 87(2)(b) is known to carry a firearm and resist arrest, and is therefore presumed to be armed and dangerous.

On June 2, 2012, PO Rogers conducted two EAS searches, used to obtain a suspect’s contact information. He searched for information on § 87(2)(b) and an individual named § 87(2)(b). § 87(2)(b) is listed as a “person of interest.” PO Rogers also attached three photographs of the unmarked vehicle, documenting the damage to the doors and hood.

At approximately 12:10 a.m. on June 6, 2012, PO Rogers and PO Ponce observed three males drinking and acting in a disorderly fashion outside of § 87(2)(b). When approached, the males threatened the officers, before fleeing. Two of the males, identified by PO Rogers as § 87(2)(b) and § 87(2)(b), were apprehended and issued C-summonses. Later that day, PO Rogers conducted an EAS search for § 87(2)(b) information.

At approximately 10:45 p.m. on July 3, 2012, § 87(2)(b) was arrested in regards to the damage to the unmarked vehicle. The arrest date is initially erroneously reported as being July 4, 2012. However, it is later corrected to be July 3, 2012. On July 24, 2012, PO Rogers requested that I-card #§ 87(2)(b) be cancelled, due to the suspect’s arrest (Encl. 13C-T).

#### **Arrest Report #§ 87(2)(b)**

At 10:45 p.m. on July 3, 2013, PO Rogers arrested § 87(2)(b) at § 87(2)(b) in regards to complaint #§ 87(2)(b). § 87(2)(b) was charged with § 87(2)(b). The narrative states that § 87(2)(b) damaged the doors and hood of an unoccupied unmarked police vehicle. § 87(2)(b) was injured during the arrest, and admitted to a hospital afterwards. Notation indicates that physical force was used against § 87(2)(b) in order to overcome assault (Encl. 13U-V).

#### **CCRB Testimony**

PO Rogers was interviewed at the CCRB on September 6, 2013 (Encl. 13W-Y). At a date, time and location identified by the investigation as 11:00 p.m. on June 1, 2012, PO Rogers drove to § 87(2)(b) in Co-op City, in the Bronx, to conduct a criminal investigation. While at the location, PO Rogers’ vehicle was damaged by § 87(2)(b). PO Rogers had had many interactions with § 87(2)(b) in the past, including arresting him for § 87(2)(b) in 2005, and § 87(2)(b) in 2006. During the 2005 arrest, § 87(2)(b) had pointed a gun at PO Rogers. As a result of his encounter, PO Rogers generally assumed that § 87(2)(b) was armed whenever they interacted. PO Rogers did not describe either the June 1, 2012 incident, or any

subsequent investigation he may have conducted into the incident, in any significant detail. PO Rogers did not explain why he suspected § 87(2)(b) of having damaged the car.

At an unspecified time during the evening on July 3, 2012, PO Rogers received a call from an unidentified civilian, stating that he or she had seen § 87(2)(b) outside of § 87(2)(b). PO Rogers and his partner, Det. Garcia, responded to the location to find § 87(2)(b). PO Rogers explained that his intent at the time was to bring § 87(2)(b) back to the stationhouse, to question him about the June 1, 2012 incident.

At approximately 10:35 p.m., PO Rogers and Det. Garcia arrived at § 87(2)(b). Before exiting the car, PO Rogers noticed § 87(2)(b) exiting the building's rear door, approximately 20 feet away. PO Rogers exited the vehicle and approached § 87(2)(b). When PO Rogers was about five or six feet away, § 87(2)(b) turned to him and stated, "Rogers, I want to talk to you about the car." § 87(2)(b) then turned and began running back towards § 87(2)(b). PO Rogers chased after him. At that point, he had not said anything to § 87(2)(b).

PO Rogers was able to catch up to § 87(2)(b) within moments. As he approached, however, § 87(2)(b) stopped, turned around, and swung his fist towards PO Rogers' head. PO Rogers was able to move his head out of the way, causing the blow to strike him on his left shoulder instead. With the situation now having escalated to an arrest, PO Rogers grabbed § 87(2)(b) around his torso and waist, and pushed him to the ground in order to handcuff him. When PO Rogers pushed, however, he lost his balance as well, and fell to the ground on top of § 87(2)(b). PO Rogers did not recall how § 87(2)(b) struck the ground when he fell, but did recall that § 87(2)(b)'s body landed on top of his right hand, causing PO Rogers pain.

Once both PO Rogers and § 87(2)(b) were on the ground, § 87(2)(b) rolled onto his back and began punching at PO Rogers' head. PO Rogers did not recall how many times § 87(2)(b) punched at him. PO Rogers held both of his hands up in front of his face to defend himself. As § 87(2)(b) punched, PO Rogers attempted to grab at his hands to gain control of them. He also commanded § 87(2)(b) to stop resisting, and to yield control of his hands. PO Rogers punched back at § 87(2)(b) several times during the incident, striking his face with both hands. He did not recall how many times he punched § 87(2)(b). This force was used to subdue and restrain § 87(2)(b) for arrest. PO Rogers did not use any other force besides punching § 87(2)(b) and grabbing at § 87(2)(b)'s arms. PO Rogers did not recall what, if any, actions Det. Garcia took during the struggle. After several minutes, § 87(2)(b) was rolled onto his stomach, and his arms were pulled behind his back. PO Rogers did not recall how he was able to achieve this. Once § 87(2)(b) was turned over, Det. Garcia placed him in handcuffs.

Once § 87(2)(b) was restrained, a number of backup officers arrived at the location. These officers were from both the NYPD and the Co-op City Department of Public Safety. PO Rogers stated that they responded to multiple calls for backup he himself had put over the radio. He did not recall, however, when he made these calls. § 87(2)(b) was loaded into the rear of an NYPD vehicle, and transported to the 45<sup>th</sup> Precinct stationhouse. PO Rogers did not accompany § 87(2)(b) and had no further interaction with him.

In the wake of the arrest, a large crowd gathered around the location. PO Rogers was later informed that the backup officers arrested several of the bystanders. He himself did not witness any of these arrests, though he did see several individuals in handcuffs. PO Rogers did not recognize an arrest photograph of § 87(2)(b) one of the individuals who was arrested.

PO Rogers did not recall seeing any injuries to § 87(2)(b). He was later informed that § 87(2)(b) was taken to § 87(2)(b) but did not know why he was taken, or what treatment he received. Later that night, PO Rogers went to an unspecified hospital to have his right hand examined. PO Rogers had suffered a fracture to his right hand, forcing him to take several days off after the incident.

**Witness Officer: DET. JACOB GARCIA**

- *Det. Garcia, § 87(2)(b) old at the time of the incident, is a 5'10", 265-pound Hispanic male with brown hair and green eyes.*
- *Det. Garcia worked from 3:45 p.m. on July 3, 2012 until 1:00 a.m. on July 4, 2012. He was assigned to investigative duty as part of the 45<sup>th</sup> Precinct Detective Squad. He worked with PO Robert Rogers. Det. Garcia was in plainclothes, and assigned to an unmarked blue Ford Taurus, RMP #1500.*

**Memo Book**

At 10:00 p.m. on July 3, 2012, Det. Garcia arrived at § 87(2)(b). At 10:45 p.m., he arrested § 87(2)(b) at the location. At 11:00 p.m., he returned to the 45<sup>th</sup> Precinct stationhouse to process the arrest. At 11:55 p.m., Det. Garcia responded to § 87(2)(b) in regards to an officer injured during the arrest (Encl. 14A-D).

**Complaint Report #§ 87(2)(b) and Arrest Report #§ 87(2)(b)**

Det. Garcia prepared complaint and arrest reports regarding § 87(2)(b)'s arrest. Both state that at 10:45 p.m. on July 3, 2012, while attempting to arrest § 87(2)(b) in regards to open complaint #§ 87(2)(b), PO Robert Rogers sustained a broken right hand and lacerations to his left hand. Notation indicates that force was used against § 87(2)(b) in order to overcome his assault. He was charged with § 87(2)(b) (Encl. 14E-H).

**Criminal Court Complaint**

Det. Garcia prepared a criminal court complaint regarding § 87(2)(b)'s arrest on July 3, 2012. It states that based upon statements from both witnesses and § 87(2)(b) himself, on June 1, 2012, § 87(2)(b) damaged an unmarked police car. It further states that when PO Rogers attempted to arrest § 87(2)(b) at approximately 10:45 p.m. on July 3, 2012, § 87(2)(b) struck him in the face and body several times with his elbows. As a result, PO Rogers suffered a fracture to his right hand (Encl. 14I-J).

**CCRB Testimony**

On August 22, 2013, Det. Garcia was interviewed at the CCRB (Encl. 14K-M). On the night of July 3, 2012, Det. Garcia was assigned to assist PO Rogers search for § 87(2)(b) a suspect in an open case. PO Rogers had received a call informing him that § 87(2)(b) was present at § 87(2)(b) in Co-op City, in the Bronx. Det. Garcia did not usually work with PO Rogers, and was unfamiliar with the details of § 87(2)(b)'s case. He was, however, familiar with § 87(2)(b) having arrested him once before for § 87(2)(b).

At approximately 10:45 p.m., Det. Garcia and PO Rogers drove to § 87(2)(b). A group of people were standing outside of § 87(2)(b). PO Rogers approached this group, while Det. Garcia walked towards the neighboring building, 140 Alcott Place. As he walked towards the second building, Det. Garcia heard PO Rogers speaking to one of the group members 20 to 30 feet away. When he turned, he saw that his partner was speaking to § 87(2)(b). § 87(2)(b) was apologizing to PO Rogers. Det. Garcia did not hear any conversation between PO Rogers and § 87(2)(b) before this moment. He also did not know what § 87(2)(b) was apologizing for.

PO Rogers reached out and tried to grab § 87(2)(b)'s hand. He did not make any statements or issue any commands before reaching out. § 87(2)(b) slapped PO Rogers' hand away, turned, and ran away. He did not say anything as he ran. PO Rogers told § 87(2)(b) to stop resisting. Det. Garcia did not recall if he told § 87(2)(b) to stop running as well. PO Rogers chased § 87(2)(b) for approximately 15 feet, reaching out towards § 87(2)(b) as he ran. § 87(2)(b) flailed his arms as he ran, trying to fend PO Rogers off. As he ran, however, the flailing caused § 87(2)(b) to lose his balance and fall over. § 87(2)(b) landed face-first on the ground. Det. Garcia did not see if § 87(2)(b) struck his head when he fell. As PO Rogers had been following closely behind § 87(2)(b), he himself tripped over § 87(2)(b)'s prone form, losing his balance as well. PO Rogers landed on § 87(2)(b)'s back.

Seeing his partner go to the ground, Det. Garcia ran over to assist. PO Rogers grabbed at § 87(2)(b)'s right arm, and told him to stop resisting. § 87(2)(b) placed his left arm underneath his body. As Det. Garcia approached the two, he saw PO Rogers swing his fist towards § 87(2)(b). He did not see if this blow landed, or what part of § 87(2)(b)'s body the blow was aimed at. After swinging at § 87(2)(b), PO Rogers resumed pulling on his right arm. Once Det. Garcia arrived at his partner's side, he placed a handcuff on § 87(2)(b)'s right wrist. He then tried to roll § 87(2)(b) off of his stomach, to free his left arm. Det. Garcia, however, was ultimately unable to roll § 87(2)(b) over.

After several minutes of pulling at § 87(2)(b)'s left arm, Det. Garcia and PO Rogers were eventually able to drag it out from under § 87(2)(b)'s chest, and bring it behind his back for handcuffing. By this time, a large number of civilian bystanders had gathered, as well as several officers, both from the NYPD and the Co-op City Department of Public Safety, had arrived. These officers formed a perimeter around § 87(2)(b) to prevent the crowd from interfering in the arrest. Det. Garcia did not recall either himself or PO Rogers requesting backup at any point.

Once § 87(2)(b) was in handcuffs, he was lifted to his feet and escorted to a nearby police vehicle. He was then transported to the 45<sup>th</sup> Precinct stationhouse for processing. En route, § 87(2)(b) complained that one of his eyes hurt. Det. Garcia did not observe any injuries to § 87(2)(b) at that time. When shown § 87(2)(b)'s arrest photograph, in which § 87(2)(b)'s left eye is visibly swollen, Det. Garcia stated that he did not recall seeing § 87(2)(b) in that state. PO Rogers suffered a broken right hand during the incident. Det. Garcia did not know how PO Rogers received this injury. Later, at the stationhouse, Det. Garcia was informed that § 87(2)(b) had been taken to a hospital for an injury to his eye.

**Subject Officer: SGT. ADAM MELLUSI**

- *Sgt. Mellusi, § 87(2)(b) old at the time of the incident, is a 6'1", 220-pound white male with brown hair and brown eyes.*

- *On July 3, 2012, Sgt. Mellusi worked from 2:50 p.m. until 11:35 p.m. He was assigned as a patrol supervisor for the 45<sup>th</sup> Precinct. PO Robert Candrea was his operator. He was in uniform, and assigned to marked RMP #3518.*

### **Memo Book**

Sgt. Mellusi did not have any memo book entries regarding the incident (Encl. 15A-C).

### **CCRB Testimony**

On November 7, 2013, Sgt. Mellusi was interviewed at the CCRB (Encl. 15D-E). At approximately 10:35 p.m. on July 3, 2012, Sgt. Mellusi received a call for additional units at § 87(2)(b) in Co-op City, in the Bronx. Approximately five minutes later, Sgt. Mellusi arrived at § 87(2)(b). He found that an individual, identified by the investigation as § 87(2)(b) had been arrested and placed in handcuffs. Approximately 40 officers were at the location, including NYPD officers from various local commands, and officers from the Co-op City Department of Public Safety.

While Sgt. Mellusi had never interacted with § 87(2)(b) he was aware that officers from the 45<sup>th</sup> Precinct had arrested § 87(2)(b) numerous times for drug- and weapon-related offenses. Sgt. Mellusi was informed that § 87(2)(b) had been arrested in regards to an ongoing investigation that PO Robert Rogers of the 45<sup>th</sup> Precinct Detective Squad had been conducting. He did not know any of the details of PO Rogers' investigation, save that it might have been involved robbery or a weapons-related offense. Sgt. Mellusi did not know which officers had actually placed § 87(2)(b) under arrest, and did not recall what officers were interacting with § 87(2)(b) after the arrest. He did not see any force used against § 87(2)(b) at any point.

Roughly 100 bystanders had gathered around the officers. While most of the bystanders were only passively observing the arrest, many of them were shouting angrily at the officers. Some of these individuals were recording the incident on their cell phones, and several tried to approach the officers directly. Between six and eight of these individuals were arrested at the location for disorderly conduct. Sgt. Mellusi himself did not make any of these arrests, or participate directly in them. He believed that most of these individuals were taken to the 45<sup>th</sup> Precinct stationhouse, where they were eventually released with summonses.

Sgt. Mellusi initially stated that he did not recall speaking with any of these individuals, before or after they were arrested. While he did not recall using any profanity, he stated that he might have used the word "fuck" in the context of a command while speaking with some of the disorderly individuals, making statements such as, "Get the fuck back." Later, however, Sgt. Mellusi was shown video footage taken by § 87(2)(b) one of the individuals arrested for § 87(2)(b). Sgt. Mellusi identified himself as one of the officers heard in the footage telling § 87(2)(b) to back away from the location. He was also shown part of the video in which he can be heard telling § 87(2)(b) "Shut the fuck up." After reviewing this footage several times, Sgt. Mellusi stated that he was unable to hear anything.

### **Medical Records**

### **Medical Treatment of Prisoner Report**

A Medical Treatment of Prisoner Report was prepared for § 87(2)(b) by an officer named “Garcia” from the 45<sup>th</sup> Precinct. The narrative states that § 87(2)(b) displayed swelling around his left eye. The report does not specify what hospital § 87(2)(b) was transported to (Encl. 16A).

### **§ 87(2)(b) Records**

§ 87(2)(b)'s medical records could not be obtained by the investigation. § 87(2)(b) signed medical release forms during his interview on August 14, 2012. Subpoenas were mailed to § 87(2)(b) on September 6, 2012. On March 4, 2013, § 87(2)(b) was contacted in regards to the first subpoena. The hospital denied ever receiving the first subpoena. A second subpoena was sent later that day. On April 15, 2013, § 87(2)(b) mailed a letter to the CCRB, stating that § 87(2)(b)'s medical release form had not been properly filled out. The letter indicated that a resubmission form had been included inside. No such form, however, could be found. The receipt of the letter was not initially noted in the case's Investigative Actions. It is therefore unclear if the resubmission form was sent to § 87(2)(b) by the prior investigator.

As § 87(2)(b)'s signed medical release forms had been sent out with the earlier subpoenas, efforts were made to obtain additional signed copies from § 87(2)(b). This was complicated by the fact that § 87(2)(b) was arrested in § 87(2)(b). He is currently incarcerated at the § 87(2)(b), awaiting trial for § 87(2)(b) (Encl. 6F). On October 31, 2013, a call was made to the Inmate Advocate at the jail. The Advocate stated that the form could be faxed to the jail, and that the form would be faxed back after § 87(2)(b) reviewed and signed it. A copy of the medical release form was faxed to the jail later that day, with the return fax number attached. To date, the medical release form has not been returned from the Bergen County Jail. Follow-up calls were made to the Inmate Advocate's office on November 7, 2013 and November 14, 2013. Voicemails were left on each call.

### **Line-of-Duty Control Log**

While the Medical Division was unable to provide a copy of Line-of-Duty Injury Report #§ 87(2)(b) they were able to provide a copy of the Line-of-Duty Control Log. The log indicates that PO Rogers was treated at § 87(2)(b) on July 4, 2012 for a fractured right hand. The narrative states that PO Rogers received this injury, as well as an unspecified injury to his left hand, while trying to arrest a fleeing perpetrator at § 87(2)(b) in Co-op City, in the Bronx (Encl. 16F-G).

### **NYPD Documents**

#### **Complaint #§ 87(2)(b)**

PO Jeffrey Gaston of the 45<sup>th</sup> Precinct prepared a complaint report regarding the damage to PO Rogers' vehicle. At approximately 11:00 p.m. on June 1, 2012, an unknown individual damaged an unoccupied unmarked police vehicle by kicking the driver side door, passenger side door, and the hood. The case was closed on July 3, 2012, when § 87(2)(b) was arrested (Encl. 18C-D).

### **45<sup>th</sup> Precinct Command Log**

Both § 87(2)(b) and § 87(2)(b) were arrested on July 3, 2012, and taken to the 45<sup>th</sup> Precinct stationhouse for processing. § 87(2)(b) arrived at 10:50 p.m., and § 87(2)(b) arrived at 10:55 p.m. § 87(2)(b) was arrested for § 87(2)(a) Fam. Ct. Act § 281.3, § 87(2)(b). His physical condition was listed as “normal.” § 87(2)(b) was released into his mother’s custody at 12:25 a.m. on July 4, 2012, and issued a juvenile report. No charges are listed for § 87(2)(b). He had several cuts on his face, and was taken to § 87(2)(b) at 12:45 a.m. on July 4, 2012. § 87(2)(b) was returned to the stationhouse at 8:45 a.m., and taken to Central Booking at 12:40 p.m. (Encl. 18H-J).

#### **Summons/Arrest for Incident and Disposition**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)

#### **Status of Civil Proceedings**

- A request for any Notices of Claim filed by § 87(2)(b) and § 87(2)(b) was sent to the Comptroller’s office on August 7, 2013. No response was made to this request. A second request was submitted on December 5, 2013. The results will be added to the case file upon receipt (Encl. 22U).

#### **Civilians Conviction History**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
- § 87(2)(b)  
§ 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)

#### **Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b)  
§ 87(2)(b) or § 87(2)(b) (Encl. 3A-F).
- § 87(2)(b) has filed the following CCRB complaints (Encl. 3G):
  - § 87(2)(b)  
§ 87(2)(b)
  - § 87(2)(b)  
§ 87(2)(b)

### **Subject Officers CCRB History**

- PO Robert Rogers has been a member of the service for 10 years and there are no substantiated CCRB allegations against him (Encl. 2A-B).
- Det. Jacob Garcia has been a member of the service for 12 years and there are no substantiated CCRB allegations against him (Encl. 2C).
- Sgt. Adam Mellusi has been a member of the service for 11 years and there are no substantiated CCRB allegations against him (Encl. 2D).

### **Conclusion**

### **Identification of Subject Officers**

- § 87(2)(b) described the officer who approached him, tackled him, and punched him as a 6' white male in his forties. He recognized the officer from previous encounters, giving his name as "Rogers." PO Rogers is a 6'4" white male in his 30s. PO Rogers identified himself as the officer who pursued § 87(2)(b) and punched him. § 87(2)(g)
- § 87(2)(b) described the officer who kicked him in the face as a heavysset 5'9" white male in his thirties. Det. Garcia is a 5'10", 250-pound Hispanic male in his thirties. Det. Garcia was partnered with PO Rogers, and stated that he assisted PO Rogers in arresting § 87(2)(b). § 87(2)(g)
- In § 87(2)(b)'s video, a uniformed white male officer with sergeant's chevrons is seen using profanity. Sgt. Mellusi confirmed that he is the officer shown in the video. § 87(2)(g)

### **Allegations Not Pleaded**

- § 87(2)(b) alleged that officers at the location broke cell phones belonging to two of the bystanders. He also alleged that § 87(2)(b)'s arresting officer punched him. All accounts agree that a large number of officers from both the NYPD and the Co-op City Department of Public Safety were present at the location, and made arrests. § 87(2)(b) did not describe the officers who broke the phones or struck § 87(2)(b) in any detail. § 87(2)(b) was scheduled twice to be interviewed regarding the incident, but he did not appear for either appointment. Absent further testimony or documentation, it is impossible to determine which organization these officers belonged to. § 87(2)(g)
- § 87(2)(b) and § 87(2)(b) all alleged that PO Rogers struck § 87(2)(b) with a radio. All three made these statements long after the incident, with § 87(2)(b) and § 87(2)(b) making the allegations over a year later. § 87(2)(b) the victim of this allegation, only stated that PO Rogers punched him. § 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegation A: Abuse of Authority: PO Robert Rogers stopped § 87(2)(b)**

§ 87(2)(b) stated that when PO Rogers approached him outside of § 87(2)(b) he began walking away from the officer. PO Rogers came up behind him and threw him to the ground. § 87(2)(b) stated that § 87(2)(b) backed away from PO Rogers when he was approached. While § 87(2)(b) and § 87(2)(b) both stated that PO Rogers came up to § 87(2)(b) and pushed him



to the ground, neither stated that § 87(2)(b) was trying to walk or run away. PO Rogers and Det. Garcia both stated that § 87(2)(b) tried to run from PO Rogers, and that PO Rogers gave chase. In PO Rogers' account, he himself did not say anything to § 87(2)(b) before § 87(2)(b) fled. Before running, § 87(2)(b) told him, "Rogers, I want to talk to you about the car." Det. Garcia stated that PO Rogers spoke briefly to § 87(2)(b) before the pursuit. He also heard § 87(2)(b) apologizing to PO Rogers for something, but he was unable to recall what the apology was in regards to.

In order to stop an individual, an officer must have reasonable suspicion that such person has committed a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (Encl. 1A-K). Flight upon an officer's approach, when combined with an already-existing founded suspicion, yields reasonable suspicion. People v. Johnson, 207 A.D.2d 806 (Sup. Ct. 2<sup>nd</sup> Dept., 1994) (Encl. 1L-M).

Neither § 87(2)(b) nor § 87(2)(b) stated that § 87(2)(b) fled from the officers. PO Rogers and Det. Garcia stated that § 87(2)(b) ran after PO Rogers approached him. While § 87(2)(b) and § 87(2)(b) did not state that he ran, they did state that after he noticed PO Rogers, § 87(2)(b) attempted to move away. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The most complete account of the June 1, 2012 was provided in PO Rogers' Complaint Follow-Up Information Report. It states that § 87(2)(b) got into a verbal dispute with PO Rogers outside of § 87(2)(b). PO Rogers then entered the building to conduct an unrelated investigation. Upon exiting, he found that the vehicle had been damaged. The report does not state whether anybody other than § 87(2)(b) was present, or if § 87(2)(b) was ever seen near the officers' car. The report also indicates that PO Rogers put out an I-card for § 87(2)(b). The I-card, however, specifies that § 87(2)(b) is a suspect only, and that there is no probable cause to arrest § 87(2)(b). Subsequent investigative steps outlined in the report do not make any direct mention of § 87(2)(b). Instead, they make reference to two other individuals, § 87(2)(b) and § 87(2)(b), who were not mentioned in the initial account of the June 1, 2012 incident. The level of detail presented in the report does not provide a complete account, § 87(2)(g)

The criminal court complaint, prepared by Det. Garcia, indicates that the officers determined § 87(2)(b) damaged the police vehicle based on investigation, witness statements, and statements from § 87(2)(b) himself. It is unclear in the complaint, however, what specific information they had, or whether they possessed this information at the time of the stop.

PO Gaston's complaint report, prepared regarding the June 1, 2012 incident, explicitly stated in the narrative that the suspect was unidentified at the time. § 87(2)(g)

§ 87(2)(g)

**Allegation B: Force: PO Robert Rogers used physical force against § 87(2)(b)**

It is undisputed that physical force was used against § 87(2)(b). Accounts vary, however, on what force was used, and under what circumstances.

§ 87(2)(b) alleged that after PO Rogers pursued him, he grabbed § 87(2)(b) by the neck and threw him to the ground. PO Rogers then punched § 87(2)(b) 15 to 20 times in the face. § 87(2)(b) reacted to this force by holding his arms up to guard his face. § 87(2)(b) corroborated most of § 87(2)(b)'s statement, save that she stated that he was punched approximately eight times. § 87(2)(b) also stated that PO Rogers threw § 87(2)(b) to the ground, but did not state that PO Rogers punched him. § 87(2)(b) stated that PO Rogers punched § 87(2)(b) once while he was still standing, causing him to fall to the ground. She did not allege that PO Rogers punched § 87(2)(b) while he was on the ground. Neither § 87(2)(b) nor § 87(2)(b) was present when § 87(2)(b) was first approached by PO Rogers.

Both PO Rogers and Det. Garcia stated that after PO Rogers pursued § 87(2)(b) § 87(2)(b) swung his fist at PO Rogers. Both PO Rogers and § 87(2)(b) then lost their balance and fell to the ground. PO Rogers stated that § 87(2)(b) punched several times at his face. In response, he punched § 87(2)(b) an unknown number of times in the face. Det. Garcia, however, stated that § 87(2)(b) only resisted PO Rogers by burying his left arm underneath his body, preventing handcuffing. He stated that he saw PO Rogers swing his fist once at § 87(2)(b) but did not recall where he was aiming, or if the blow made contact.

§ 87(2)(b)'s medical records could not be obtained. However, civilian and officer accounts both stated that he was treated for a fractured orbital at § 87(2)(b). His arrest photograph also showed severe swelling to his left eye. § 87(2)(b) also stated that his nose was broken, and that he chipped a tooth. PO Roger's Line-of-Duty Control Log confirmed that he was treated for a broken right hand at § 87(2)(b).

NYPD Patrol Guide Procedure 203-11 states that officers are permitted to use minimal force to overcome a suspect's resistance in order to effect an arrest (Encl. 1N-O).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

**Allegation C: Force: Det. Jacob Garcia use physical force against § 87(2)(b)**

§ 87(2)(b) alleged that Det. Garcia kicked him an unknown number of times on the right side of his face. None of the other accounts, however, mentioned this. § 87(2)(b) stated that Det. Garcia assisted PO Rogers in pushing § 87(2)(b) to the ground, but this statement is also uncorroborated. Neither § 87(2)(b) nor § 87(2)(b) made any allegations against Det. Garcia. Det. Garcia stated that he assisted PO Rogers in pulling § 87(2)(b)'s arms behind his back. He denied punching or kicking § 87(2)(b). PO Rogers only recalled that Det. Garcia placed § 87(2)(b) in handcuffs after the struggle on the ground. Finally, there is no discernable injury to the right side of § 87(2)(b)'s face in his arrest photo.

§ 87(2)(g) [REDACTED]

**Allegation D: Discourtesy – Sgt. Adam Mellusi spoke rudely to § 87(2)(b)**

In the video footage, taken by § 87(2)(b) but provided to the CCRB by § 87(2)(b) Sgt. Mellusi can be heard telling § 87(2)(b) “Shut the fuck up.” Sgt. Mellusi was not seen making any previous statements to § 87(2)(b) and did not face § 87(2)(b) when he made the statement. When shown the footage, Sgt. Mellusi stated that he was unable to hear any profanity. He maintained this even after the footage was slowed down, and the volume was raised. He did not recall using any profanity during the incident.

According to NYPD Patrol Guide Procedure 203-09, officers are to be courteous and respectful when dealing with the public (Encl. 1P). Limited use of profanity, when used to maintain order in a stressful street encounter, does not constitute misconduct. NYPD v. § 87(2)(b) OATH Index 78667/03 (Encl. 1Q-T).

§ 87(2)(g)  
[Redacted text block]

§ 87(4-b), § 87(2)(g)  
[Redacted text block]

[Redacted text block]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

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Date